

WEST VIRGINIA CODE: §33-12-25

§33-12-25. Termination of authority to represent insurer.

(a) Termination for cause. -- An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the Insurance Commissioner within thirty days following the effective date of the termination, using a format prescribed by the Insurance Commissioner, if the reason for termination is one of the reasons set forth in section twenty-four of this article or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section twenty-four of this article. Upon the written request of the Insurance Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) Termination without cause. -- An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in section twenty-four of this article, shall notify the Insurance Commissioner within thirty days following the effective date of the termination, using a format prescribed by the Insurance Commissioner. Upon written request of the Insurance Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) Ongoing notification requirement. -- The insurer or the authorized representative of the insurer shall promptly notify the Insurance Commissioner in a format acceptable to the Insurance Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Insurance Commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) Copy of notification to be provided to producer. --

(1) At the time of making the notification required by subsections (a), (b) and (c) of this section, the insurer shall simultaneously mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in section twenty-four of this article, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the Insurance Commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Insurance Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (f) of this section.

(e) Immunities. --

- (1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Insurance Commissioner, or an organization of which the Insurance Commissioner is a member and that compiles the information and makes it available to other Insurance Commissioners or regulatory or law-enforcement agencies may not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Insurance Commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (a) of this section was reported to the Insurance Commissioner, provided that the propriety of any termination for cause under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.
- (2) In any action brought against a person that may have immunity under subdivision (1), subsection (e) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the Insurance Commissioner, the party bringing the action shall plead specifically in any allegation that subdivision (1), subsection (e) does not apply because the person making the statement or providing the information did so with actual malice.
- (3) Subdivision (1), subsection (e) or subdivision (2), subsection (e) shall not abrogate or modify any existing statutory or common law privileges or immunities.

(f) Confidentiality. --

- (1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the Insurance Commissioner in an investigation pursuant to this section shall be confidential by law and privileged, may not be subject to chapter twenty-nine-b of this code, may not be subject to subpoena, and may not be subject to discovery or admissible in evidence in any private civil action. However, the Insurance Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Insurance Commissioner's duties.
- (2) Neither the Insurance Commissioner nor any person who received documents, materials or other information while acting under the authority of the Insurance Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of subsection (f).
- (3) In order to assist in the performance of the Insurance Commissioner's duties under this article, the Insurance Commissioner:

- (A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (1) of this subsection, with other state, federal, and international regulatory agencies, with the national association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
- (B) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (C) May enter into agreements governing sharing and use of information consistent with this subsection.
- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (3) of this subsection.
- (5) Nothing in this article shall prohibit the Insurance Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to chapter twenty-nine-b of this code to a database or other clearinghouse service maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries of the national association of Insurance Commissioners.
- (g) Penalties for failing to report. -- An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with subsection (e), section twenty-four of this article.